

NELSON P. COHEN
United States Attorney

RICHARD L. POMEROY
Assistant U.S. Attorney
222 West Seventh Avenue, #9
Anchorage, Alaska 99513-7567
Phone: (907) 271-5071
Fax: (907) 271-2344
E-mail: richard.pomeroy@usdoj.gov

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JOHNNIE CRISCO and THE ESTATE OF
ANNA CRISCO BY HER PERSONAL
REPRESENTATIVE, ROBIN BOOKER,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 3:03-cv-00011-HRH

STIPULATED FACTS

The parties submit the following stipulated facts:

Plaintiff Johnnie Crisco was born in Rockingham, North Carolina, on August 14, 1938.

His formal education ended after he completed the seventh grade. He enlisted in the Coast Guard in 1958 and was honorably discharged in 1960. He and Anna married in 1959. They moved to Alaska in 1996. He worked a variety of jobs over the years, his last being a bagger at Safeway in 2000.

Mr. Crisco has an extensive medical history. In 1973, he was involved in an elevator accident in which both knees were injured. He has left and right knee arthroscopies in 1978 to remove cartilage.

He was injured in a motor vehicle accident on March 20, 1983. In May, 1983 he was diagnosed with osteoarthritis of both knees, the right being worse than the left. He was hospitalized on July 7, 1983 with severe bilateral post-traumatic degenerative arthritis of his knees and abdominal pain. Mr. Crisco rejected the option to have his right knee joint fused. On November 2, 1984, he received a right total knee replacement as the Veteran's Administration Medical Center in Durham, North Carolina. He later had a revision of this knee replacement performed.

On October 14, 1986, Mr. Crisco had a high tibial valgus osteotomy on his left leg to alleviate pain. He reported to his doctor continued pain in the knee on January 28, 1987.

Mr. Crisco had his gallbladder removed in 1996. He had back surgery in February and March 1998. He had shoulder surgery in 1999.

On November 9, 2000, Mr. Crisco informed VA physician assistant Ben Hull that he wanted to proceed with a replacement of his left knee after the first of the year. He was scheduled for surgery in January, 2001.

On January 9, 2001, Mr. Crisco was informed by Dr. Bhagia of the risks of surgery, including the risk of infection, implant failure, and the need for further surgery. X-rays showed advanced degenerative joint disease in the left knee, with total loss of medial joint space and osteophyte formation. His left knee range of motion was 5 - 120 degrees.

The total left knee replacement surgery was performed on January 10, 2001 at the

DOD/VA Joint venture hospital at Elmendorf Air Force Base, Alaska.. Mr. Crisco complained of significant pain after the surgery. He was given IV morphine. On January 13, 2001, he reported that his knee was feeling good and he was ambulating with crutches. He was discharged that day.

Mr. Crisco returned to the VA on January 22, 2001 complaining of pain. His range of motion was 15 - 75 degrees. He reported falling down some stairs on January 28, 2001; findings were negative. By February 13, his range of motion had improved to 10 - 110 degrees. The incision at the staple removal site had become infected and Mr. Crisco was prescribed antibiotics. A suture that was sticking out of the incision site was removed on February 20. Mr. Crisco reported falling on the ice on February 28, but did not recall whether he fell on his left leg. Mr. Crisco continued to complain of knee pain. An examination on April 12, 2001 revealed no effusion of the left knee, a range of motion of 5 - 100 degrees, the incision site was well healed, the joint was stable, and the patella and joint line anteriorly seemed tender.

On April 16, Mr. Crisco requested a second opinion. He saw Dr. Gregory Schumacher, an orthopedic surgeon at Elmendorf AFB on May 8, 2001.

Mr. Crisco complained of continued pain on June 11, 2001. His range of motion was 0 - 115 degrees and x-rays showed no evidence of loosening and good patellar tracking. He was prescribed Percocet and advised to follow up in three months. Again on July 19, 2001 Mr. Crisco complained of constant pain and swelling. His range of motion was 5 - 90 degrees and significant quadricep atrophy was noted. Mr. Crisco again requested a second opinion.

Mr. Crisco went to the VA Medical Center in Seattle for another opinion. He was seen by Dr. Howard Chansky on August 27, 2001.

Mr. Crisco requested revision surgery on September 17, 2001. He wanted a prosthesis similar to the one in his right knee. Dr. Bhagia requested a pain clinic consult.

On October 2, 2001, Mr. Crisco was referred to Dr. Peter Ross, an orthopedic surgeon at Elmendorf for another opinion.

On October 5, 2001, Mr. Crisco went to Dr. Robert Hall, an orthopedic surgeon in Anchorage in private practice. Dr. Hall had a bone scan and x-rays taken. He told Mr. Crisco that the tibial plateau appears to have been placed in anterior slope rather than posterior slope, producing abnormal body mechanics which most likely is contributing to his pain.

A revision to the left knee was performed on November 7, 2001 by Dr. Hall at Providence hospital. He was discharged on November 11.

Mr. Crisco returned to the hospital on November 15 complaining of pain in his left knee. He was readmitted for pain control and diagnosed with a S. aureus infection that was resistant to penicillin. Dr. Bundtzen treated Mr. Crisco for this infection. He prescribed an 8 week IV antibiotic treatment. Mr. Crisco was transferred from Providence hospital to the transitional Care Unit at Alaska regional Hospital on November 22, 2001.

Because of the persistent infection around the knee and Mr. Crisco's pain, Dr. Hall removed the left knee prosthesis on December 8, 2001 and replaced it with a spacer containing antibiotics. He was placed in a knee immobilizer. Mr. Crisco still reported pain. By December 13, Mr. Crisco's white blood cell count and C-reactive protein levels were decreasing, indicating that the infection was decreasing. His leg was put in a cast on December 18. Dr. Brundtzen also noted on that day that the pain medication requirements were decreased. Mr. Crisco was discharged on December 18.

A left knee prosthesis was reimplanted by Dr. Hall on January 25, 2002 at Providence hospital. He was discharged on January 30.

Mr. Crisco was readmitted to Providence on February 19, 2002 complaining of knee pain and purulent drainage from his knee. Cultures grew S. aureus. IV antibiotics were administered for the infection. He was discharged on March 5, 2002. IV antibiotics were discontinued in April.

Through 2002 and 2003, Mr Crisco continued to have problems with infection and with pain in his left knee.

Mr. Crisco's left leg was amputated above the knee on February 25, 2004.

On June 8, 2004, Mr. Crisco was involved in an automobile accident in which he injured his left leg. A lawsuit was filed in state court that was settled on October 28, 2004. Mr. Crisco received \$58,562.33.

In early November, 2004, Anna Crisco died. Her daughter, Robin Booker, has been substituted as the administrator of her estate.

Mr. Crisco was diagnosed with lung cancer in 2006. He had surgery to remove part of his lung.

Mr. Crisco is not making a claim for any economic damages.

\\

\\

\\

\\

Respectfully submitted this 10th day of September, 2007, in Anchorage, Alaska.

NELSON P. COHEN
United States Attorney

| | | | |
s/Richard L. Pomeroy
Assistant U.S. Attorney
222 West 7th Ave., #9, Rm. 253
Anchorage, AK 99513-7567
Phone: (907) 271-5071
Fax: (907) 271-2344
E-mail: richard.pomeroy@usdoj.gov
Alaska Bar No. 8906031

KAPOLCHOK LAW OFFICES, LLC

/s/ George M. Kapolchok
George M. Kapolchok
Attorney for Plaintiffs
360 K Street, Suite 100
Anchorage, AK 99501
Phone: (907) 278-8850
Fax: (907) 278-8860
E-mail: lawoffices@kapolchok.com
Alaska Bar No. 7510071